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ROSHKA DEWOLF & PATTEN

ROSHKA DEWOLF & PATTEN, PLC
ATTORNEYS AT LAW
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET
SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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March 8, 2007

Via hand delivery

Chairman Mike Gleason
Commissioner William A. Mundell
Commissioner Jeff-Hatch-Miller
Commissioner Kristin K. Mayes
Commissioner Gary Pierce
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Re: **Public Comment in Opposition to Recommended Opinion and Order**
Arizona Water Company CC&N Extension (Coolidge)
Docket No. W-01445A-06-0317

Dear Commissioners:

Santa Cruz Water Company and Palo Verde Utilities Company (collectively, "Global") are concerned about certain aspects of the Recommended Opinion and Order ("ROO"). In particular, Global is concerned that the ROO recommends: (1) requiring an assured water supply for only a small portion of the extension area; and (2) granting a CC&N extension to Arizona Water Company ("AWC") for areas without a request for service from the landowner. Given concerns about adequacy of groundwater in the area, Global believes that an assured water supply should be required for the entire extension area. These concerns are only magnified by the very large area involved in this case. AWC's proposed extension is 20,225 acres, although it has requests for service for only 7,889 acres.¹ Thus, the requests for service cover only 39% of the proposed extension area. Global strongly supports the Commission's long-standing principle of requiring requests for service, which respects landowner rights. Thus, Global requests that the Commission: (1) require an assured water supply for the entire extension granted in this case; and (2) grant a CC&N extension only for those areas covered by requests for service.

Arizona Corporation Commission
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¹ ROO at proposed finding of fact 31.

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I The Commission should require an assured water supply.

The ROO follows Staff's recommendation that a Certificate of Assured Water Supply ("CAWS") be required for only for the "first developer."² AWC's witness testified that the area would be comprised mostly of "relatively small" developments.³ Thus, it is likely that the first CAWS would be for a small development – perhaps only 100 acres, or even 20 acres. A CAWS for only 20 acres provides no assurance of supply for this large 20,225 acre area. This requirement ignores thousands of acres. An assured water supply should be required for the entire extension area.

The extension area could potentially include up to 60,000 homes⁴, which would obviously create a large demand for water. Yet AWC's witness testified only about "drilling wells" to supply the area.⁵

Staff did not dispute Global's concerns about "serious consequences both for the health of the aquifer and the sustainability of groundwater use."⁶ However, Staff was concerned that requiring an assured water supply for the whole extension area would result in difficulty in tracking compliance since many parcels will not be developed for "10 or 15 years" because each CAWS is obtained by separately by each developer.⁷ There are three ways to address this concern. First, the Commission could limit the extension area to lands with requests for service, since those are the areas where the landowners have indicated development will occur. That should substantially shorten the compliance problem. Second, the Commission could simply rule that any areas without a CAWS after a certain time period be excluded from the CC&N. Third, the Commission could require a Designation of Assured Water Supply ("DAWS"). Staff notes that a DAWS would settle the compliance problem, explaining that a DAWS "settles the issue

² ROO at 13:27.

³ Hearing Tr. at 22.

⁴ Three homes per acre times 20,225 acres = 60,675 potential homes.

⁵ Id. at 19.

⁶ Supplemental Staff Report at 3, quoting Global.

⁷ Id.

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of water availability for a large area.”⁸ Further, a DAWS is preferable because it involves more rigorous, on-going scrutiny.⁹ Staff was concerned, however, that the utility pays for the DAWS, rather than the developers. In Global’s view, such costs are a small price to pay for an assured water supply. Staff states that this issue is “unique to this case” and that it is “a policy matter for the Commission to decide.”¹⁰ Given the large size of the extension area, and the growing realization of water scarcity, the Commission should take the safest approach, and require an assured water supply (DAWS, or multiple CAWS) for the entire extension area.

II. Landowner Rights.

A. The Commission has repeatedly rejected AWC’s arguments.

The Commission has a long tradition of respecting the property rights of landowners. This Commission does this by granting extensions only to areas where the landowner has requested service. The Commission has re-affirmed this principle in several recent cases. Most recently, the Commission limited an extension by AWC to “only... those areas in which... AWC has received specific requests for service.” *Arizona Water Company*, Decision No. 69163 (December 5, 2006) at 9. The arguments raised by AWC in that case are nearly identical to its arguments in this case. Nothing has changed in since December 2006, and there is no reason to reach a different result in this case.

Another recent example, also involving AWC, is *Woodruff Water Co.*, Decision No. 68453 (Feb. 2, 2006). In that case, the Commission denied an extension requested by AWC, explaining that “we also concur with Staff’s recommendation that additional areas which have not requested service should not be included in AWC’s certificated area at

⁸ Id.

⁹ Compare A.A.C. R12-15-709 (CAWS requirements, no ongoing review) to A.A.C. R12-15-711(c)(ADWR required to review DAWS on periodic basis).

¹⁰ Supplemental Staff Report at 3.

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this time.” *Id.* at 29. Staff’s witness testified in this case that “the Commission approved Woodruff... so there’s public interest and there’s previous Commission decisions that found it in the public interest not to continue Arizona Water territory westward.”¹¹ The *Woodruff* decision was issued little more than a year ago, and it concerned AWC. It also involved some land that is included in this case, and other land that is directly adjacent to the areas in this case.

A third example is *Lyn Lee Water Co.*, Decision No. 68445 (Feb. 2, 2006) at Finding of Fact No. 22. In *Lyn Lee*, the utility requested an extension of half a section, but the Commission denied the portion without requests for service.

The Commission has firmly stood by its request for service principle for many years. It has re-affirmed that principle in several recent cases, two of which involved AWC. There is no reason to change course now.

B. There is no showing of necessity for lands without requests for service.

In addition to respecting landowner rights, a request for service also demonstrates necessity. A “Certificate of Convenience and Necessity” obviously requires some showing of necessity. Mr. Steve Olea, Assistant Director of the Utilities Division, recently testified that “Staff has always been [of] the opinion that there has to be a need for service, and without a request, there is not a need, so there is no need to have a certificate of convenience and necessity because the necessity portion isn’t met.”¹²

Nor is there any other evidence in the record that might demonstrate necessity for those parcels without requests for service. AWC’s witness limited his discussion of

¹¹ Hearing Tr. at 70.

¹² Aug. 4, 2005 Tr. in Docket No. W-04264A-04-0438 at 1415. Staff has made this point before. For example, Staff has stated that a CC&N “should not be issued lightly... [it] by definition, requires a showing of necessity. Ordinarily, a showing of necessity is made by demonstrating requests for service for the area. In an exceptional situation, a showing of necessity can be made by other means.” *Staff’s Response to Johnson Utilities Company’s Motion to Continue*, at 1, filed April 29, 2005 in Docket Nos. W-02859A-04-0844.

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future plans for development to “properties that have requested service.”¹³ Further, just last week, AWC’s lawyer avowed to the Commission that “I will tell you as a matter of fact that the entities with whom Arizona Water deals with in their existing certificate here, from a pretty consistent standpoint, put their developments plans on hold in this region of Pinal County.”¹⁴ Thus, any claim by AWC that there is some necessity to serve the areas without requests would directly contradict its own recent statements.

C. No evidence exists to support abandoning the Commission’s principle.

AWC’s witness testified that areas without requests were included because “we’re just rounding off... so that we can easily create a legal description.... We can easily monitor our boundaries.”¹⁵ Modern computer programs make creating such descriptions a trivial concern.

AWC and Staff also referred to possible efficiencies. However, Staff’s witness admitted that, because development of this area will be so far out in the future, Staff was unable to analyze any possible cost savings, stating “who knows what the costs would be.”¹⁶

D. The extension will cut off other water companies.

AWC’s witness testified that there are three other water companies in the area.¹⁷ However, AWC’s witness was not able to name all of these companies, which suggests that AWC may not have notified all of them. In any event, granting an extension for those areas without requests for service will unfairly cut off the possibility of growth for the other three companies in the area.

¹³ Hearing Tr. at 22-23.

¹⁴ Oral Argument Tr. for February 28, 2007 in Docket No. W-01445A-06-0199 et al.

¹⁵ Hearing Tr. for November 16, 2006 at 27:17-21.

¹⁶ Id. at 72:18-19.

¹⁷ Id. at 30-33 and 78.

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E. The Commission should retain the request for service principle.

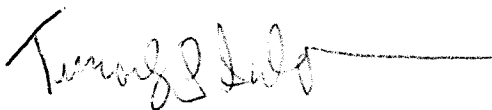
Staff's witness testified that this case "comes down to the weight that you want to give to requests for service."¹⁸ Global agrees. The Commission has long given great weight to requests for service, and it should do so here as well.

III. Conclusion.

Global appreciates this opportunity to express its views through public comment. Global recommends that: (1) that an assured water supply be required for the entire extension area granted in this case; and (2) that the Commission grant a CC&N extension for only those areas with requests for service.

Very truly yours,

ROSHKA DeWULF & PATTEN, PLC



Timothy J. Sabo

Attorneys for Global

¹⁸ Id. at 69.